

REMARKS

The pending Office Action address claims 1, 3, 7, 11, 12, 16-19, 25-28, 33, 34, and 52-62. Claims 1, 3, 7, 16-19, 25, 27, 28, 33, and 52-62 are rejected, and remaining claims 11, 12, 26, and 34 are withdrawn from consideration.

Amendment to the Specification

The cross-references to relation applications section of the specification has been amended as suggested by the Examiner to reflect the current status of the related applications.

Amendments to the Claims

Claims 1 and 28 are amended to recite that first and second lumens have central axes that extend in a plane that is parallel to opposed superior and inferior surfaces of a guide member, and that first and second opposed alignment tabs extend distally from the opposed superior and inferior surfaces of the guide member. Claim 52 is amended to recite that the lumens have central axes that extend in a plane that is parallel to opposed superior and inferior surfaces of the guide member, and that at least one alignment tab extends distally from at least one of the superior and inferior surfaces of the guide member. Support for these amendments can be found through the specification, for example, in paragraph [0033] and FIGS. 1-2B of the published application. Applicants amend claims 12 and 53 to correspond to the amended independent claims from which they depend. Applicants cancel claims 18-19, 33-34, and 59-60. No new matter is added.

Rejections Pursuant to 35 U.S.C. §112

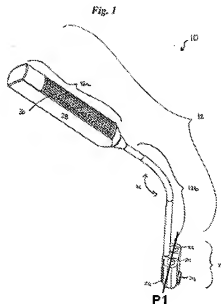
Claims 1, 3, 7, 16-19, 25, 27, 28, 33, and 52-62 are rejected pursuant to 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which the Applicant regards as the invention. Regarding claims 1, 28, and 52, the Examiner asserts that the limitation “screw bored formed in the spinal plate” lack antecedent basis as the “spinal plate” has not been positively recited in the claims. Applicants respectfully disagree. While Applicants agree that the “spinal plate” is not positively recited, all of the language after “adapted to” is functional and thus the

spinal plate does not need to be positively recited. Moreover, antecedent basis for “the spinal plate” exists in lines 8-9 of claim 1, line 9 of claim 28, and line 7 of claim 52, each of which recite “a spinal plate.” Accordingly, reconsideration and withdrawal of this objection is respectfully requested.

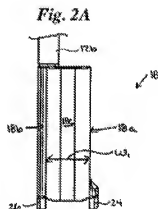
Rejections Pursuant to 35 U.S.C. §102

Claims 1, 3, 7, 16-19, 25, 27, 28, 33, 52-54, and 57-62 are rejected pursuant to 35 U.S.C. §102(b) as being unpatentable over U.S. Patent No. 5,676,666 of Oxland et al.

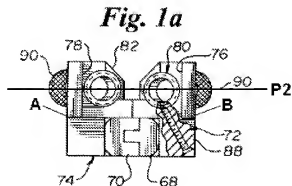
Independent claims 1, 28, and 52 each require that at least one alignment tab extends from a superior and/or inferior surface of the guide member. The superior and inferior surfaces must be ***parallel*** to a plane that includes the central axes of the first and second lumens. As illustrated for example in FIG. 1 of the present application, which is reproduced below with markings, the central axis of each lumen (20, 22) runs through the lumens, and thus the only plane that can contain both central axes is a plane that dissects the guide member in a direction represented by the line labeled P1.



Since the superior and inferior surfaces must be parallel to this plane, surfaces 18a, 18b shown in FIG. 2A reproduced below, form the claimed superior and inferior surfaces. The alignment tabs, e.g., tabs 24 and 26, extend from these surfaces.



In Oxland, the only plane that contains the central axes of both lumens in the guide member is the plane represented by line P2, as shown in a marked-up version of FIG. 1A of Oxland reproduced below. As can be clearly seen, the surfaces that are parallel to this plane do not contain any alignment tabs. Instead, sides A and B, which extend *perpendicular* to the plane, contain the tabs. Thus, Oxland does not include first and second opposed alignment tabs that extend distally from the opposed superior and inferior surfaces of the guide member, as required by independent claims 1, 28, and 52.



Accordingly, independent claims 1, 28, and 52, and claims 3, 7, 16-19, 25, 27, 33, 53, 54, and 57-62 which depend therefrom, distinguish over Oxland.

Claim Rejections under 35 U.S.C. §103

Claim 56 is rejected pursuant to 35 U.S.C. §103(a) as being obvious over Oxland. Claim 56 depends from claim 52, and thus distinguishes over Oxland for at least the same reasons discussed above. Claim 56 therefore represents allowable subject matter.

Conclusion

Applicants submit that all pending claims are now in condition for allowance, and allowance thereof is respectfully requested. The Examiner is encouraged to telephone the undersigned attorney for Applicants if such communication is deemed to expedite prosecution of this application.

Dated: December 4, 2008

Respectfully submitted,

By: /Lisa Adams/
Lisa Adams
Registration No.: 61,959
NUTTER MCLENNEN & FISH LLP
World Trade Center West
155 Seaport Boulevard
Boston, Massachusetts 02210-2604
617.439.2550
Fax 617.310.9550